IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.2759 of 2002

RAM CHARITRA CHOUDHARY, son of late Gokul Choudhary, resident of Mohalla Budhuchak, P.S. & Dist. Katihar-------petitioner

Versus

1.THE STATE OF BIHAR
2.Secretary, Department of Secondary Education, Govt. of Bihar, Patna
3.Regional Deputy Director of Education, Purnea Division, Purnea
4.District Superintendent of Education, Katihar--respondents

For the petitioner :Mr.Bimal Kumar
For the State :M/S Sunil Kumar Mandal,SC 15
Bipin Kumar,J.C. to SC 15.

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7. 28.11.2008 Petitioner has retired from the post of Head Clerk from the office of District Superintendent of Education, Katihar on 28.2.2002. He is aggrieved by the impugned orders contained in Annexures 1 and 2 dated 4th January, 2000 and 12th January, 2001, whereby the petitioner was informed that he has wrongly drawn salary in the pay scale of Rs.5000-8000/- and he is entitled to draw salary only in the pay scale of Rs.4000-6000/- till need based posts are identified and seniority list is prepared at the divisional level. As a consequence, petitioner was required to refund the excess amount received on the basis of his ad hoc promotion to the post of Head Clerk in the pay scale of Rs.5000-8000/-. On going through the impugned orders particularly those in Annexures 1 and 2 this Court finds that in principle the stand of the respondent authorities

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is quite justified that unless the need based posts are identified and regular promotions are granted on the basis of gradation list which was yet to be prepared, payment in a higher scale for the promoted posts could not have been made.

Petitioner has given relevant facts to show that he was the senior most person and was entitled for being promoted in the appropriate scale of Rs.5000-8000/-. It is for the concerned authorities to decide the claim of the petitioner for promotion in accordance with law. This Court finds no good ground to interfere with the impugned orders.

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In case, on the basis of need based posts being identified and petitioner's position in the gradation list, he is found entitled to promotion to the appropriate scale of Rs.5000-8000/-, the authorities shall consider such claim of the petitioner. However, since the petitioner has now superannuated, he can be given benefit of such promotion only if some juniors have been given such benefit. The petitioner would be entitled to raise these issues before the authorities through a representation and claim

promotion on the basis of his position in the gradation list.

If any amount has been recovered from the petitioner, in the facts of the case, such recovery would be justified in view of Full Bench decision of this Court in the case of Ram Binod Singh vs. Bihar State Electricity Board, reported in 2007(3) PLJR 398, particularly in view of paragraph 28 thereof. However, it has been submitted on behalf of the petitioner that against recovery of money already paid to the employees a SLP is pending in the Supreme Court bearing SLP(Civil) No. 23147-23150 of 2002 (Abdul Qadir vs. State of Bihar). If recovery has already been made from the petitioner and if the Supreme Court decision favours the petitioner he would be entitled to claim benefits of such decision by filing a representation before the Secretary of the Department.

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With the aforesaid observations, the writ petition is dismissed.

(Shiva Kirti Singh,J.)

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